IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

LOUIE COSPER,

Appellant,

vs.

STATE OF ILLINOIS,

Appellee.

BRIEF AND ARGUMENT FOR PETITIONER AND REASONS UPON WHICH PETITIONER RELIES REQUESTING THE GRANTING OF A WRIT OF CERTIORARI.

SPECIFICATION OF ERRORS PRESENTED.

That the Supreme Court of Illinois in the November Term of A.D. 1949, first erred, by holding no constitutional questions were presented by the petitioner, and for that cause transferring the case to the Appellate Court. (R. 31350). The Appellate Court in considering the case, rendered its opinion upon the merits and excluded all federal and state constitutional questions presented, as signed as error to the court below. (Appendix II).

The Supreme Court of Illinois, in the November Term, A.D. 1953, for the second time erred, in sustaining the opinion of the Appellate Court, by holding:

> "When cases are taken to the Appellate Court wherein errors are assigned to which that court has jurisdiction, the parties so suing out the writ of error is deemed to have waived all constitutional questions involved." (Appendix I.)

The record properly before the Supreme Court Illinois showed a denial of petitioner's substantial constitutional rights under "Due Process of Law," violative of the XIVth Amendment by sustaining the opinion of the Appellate Court (Appendix II) in rejecting and excluding all constitutional questions presented to the Supreme Court there for review. 5 Ill. 2d 97—125 NE 2d 60. (Appendix I)

WHEREFORE, it is respectfully requested, that this petition for writ of certiorari be allowed, and the writ granted to review the judgment of the Supreme Court of Illinois, including the Appellate Court, First District of Illinois.

Respectfully submitted,

LOUIE COSPER,
Petitioner,

By: HERBERT M. WETZEL,
ARTHUR FRANKEL,
DEMETRI M. SPIRO,
Attorneys for the Petitioner.

POINTS AND AUTHORITIES.

I.

In general as such reasons bearing on Constitutional inhibitions published in the opinion of the Appellate Court, First District of Illinois, affirming the judgment of the court below, relate to a denial of "due process" and a violation of petitioner's civil rights and immunities under the guarantees of Sec. 2, of Article II, Illinois State Constitution, and the XIVth Amendment to the Constitution of the United States.

Thompson v. *People*, 102 N.E. 2d. 315;
Boyd v. *United States*, 116 U.S. 616;
Carter v. *People*, 329 U.S. 173; 67 S. Ct. 216, 218;
Connally v. *General Const. Co.*, 269 U.S. 385; 46 S. Ct. 126, 127.
People v. *Green*, 368 Ill. 242; 13 N.E. 2d 278.

II.

In particular, that such reasons excluding constitutional rights as pronounced in the opinion of the Supreme Court of Illinois, relating to the opinion of the Appellate Court, First District, of Illinois, affirming the judgment of the court below are in conflict and contrary to the applicable and controlling decisions of the United States Supreme Court, and repugnant to both Article VI, Secs. 2 and 3 and the XIVth Amendment of the Constitution of the United States.

Secs. 2 and 3, Art. VI, U. S. Constitution;
Ableman v. *Booth*, 21 How. 524;
Ward v. *Love County*, 253 U.S. 17, 22;

Creswill v. *Grand Lodge Knights of Pythias,* 225 U.S. 24;
Davis v. *Wechsilier,* 263 U.S. 22, 24.

III.

In particular that such reasons rejecting "Due Process of Law" as pronounced in the opinion of the Supreme and Appellate Courts of Illinois, are in conflict with this court's own earlier decisions.

People v. *Day,* 321 Ill. 521; 152 N.E. 495;
People v. *Plocar,* 411 Ill. 141; 103 N.E. 2d 612;
People v. *Cosper,* 405 Ill. 543, 92 N.E. 2d. 173;
People v. *Chiafreddo,* 381 Ill. 214; 44 N.E. 2d. 888;
People v. *Weber,* 355 Ill. App. 250; 81 N.E. 2d 5;
People v. *Rosenthal,* 370 Ill. 244, 18 N.E. 2d. 450;
People v. *Terrill,* 362 Ill. 61, 199 N.E. 97.

IV.

In particular that such reasons in the opinions sustaining the Trial Court relating to delinquent children are in violation of the applicable Statute of Illinois, and controlling decisions of the reviewing courts of Illinois.

Chap. 38, Sec. 100 and 103, Ill. Rev. Stat. (Bar Ed.) A.D. 1953;
People v. *Day,* 321 Ill. 552, 152 N.E. 2d. 495; 369; 93
People v. *Chiafreddo,* 381 Ill. 214; 44 N.E. 2d 888;
People v. *Plocar,* 341 Ill. App. 369; 93 N.E. 2d 434;
People v. *Plocar,* 341 Ill. 141; 103 N.E. 2d 612;
People v. *Weber,* 335 Ill. App. 215; 81 N.E. 2d 5.

V.

In particular, that the instant decision of the Supreme Court of Illinois, sustaining the Trial Court on the opinion rendered by the Appellate Court, has radically departed from the accepted and usual course of judicial proceedings, and thereby sanctioned such departure by the Trial Court below.

Wallham v. *Ingersoll*, 117 Ill. 123, 7 N.E. 519;
People v. *Bruner*, 343 Ill. 146; 175 N.E. 400;
People v. *Russell*, 245 Ill. 268; 91 N.E. 1075;
United States v. *Reese*, 92 U.S. 214;
Malinski v. *New York*, 324 U.S. 401;
Anderson v. *U.S.*, 318 U.S. 350;
McNabb v. *U.S.*, 318 U.S. 332;
DeJonge v. *State of Oregon*, 299 U.S. 353, 362; 57 S. Ct. 255, 259;
Oulvey v. *Converse*, 326 Ill. 226; 157 N.E. 245;
Chicago & Eastern Illinois Railroad Co. v. *Hines*, 132 Ill. 161, 23 N.E. 1021; 22 Am. St. Rep. 515;
Klawanski v. *Peo.* 218 Ill. 481; 75 N.E. 1028;
Nash v. *United States*, 229 U.S. 373; 33 S. Ct. 780, 781; 57 L. Ed. 1232;
People v. *Brown*, 336 Ill. 257; 168 N.E. 289, 290;
United States v. *Carll*, 105 U.S. 611, 612;
United States v. *Cruikshank*, 92 U.S. 542;
Grasse v. *Dealers Transport Co.*, 412 Ill. 179; 106 N.E. 2d 124;
Italia-American Shipping Corporation v. *Nelson*, 323 Ill. 427; 154 N.E. 198;
Sec. 8 of Art. VI of the Illinois State Constitiution and Sec. 13 of Chap. 37 of the Ill. Rev. Stat. 1935; Vol. I, p. 1255.

ARGUMENT.

I.

At the outset, it will be seen that the questions presented on the records, #31350 and #33304, here for review:

(a) Require a specific consideration of the constitutionality of the law under which the informations were originally filed; and carried on a charge not made an offense by the statute.

(b) A consideration of the legal sufficiency of each of the informations themselves. Petitioner's arrest followed by conviction upon a charge not made an offense under a fatal defective information would be sheer denial of "Due Process."

On the first point petitioner presents general language from Secs. 2, 6, 9, Article II of the Constitution of Illinois, A.D. 1870, and many cases stating the well recognized rule under Sec. 2-9 of Art. II, that laws creating crime ought to be so explicit pleaded that all men subject to their penalties may know what acts it is their duty to avoid. That rule is thus stated in *People* v. *Green*, 368 Ill. 242, 13 N.E. 2d 278, 115 A.L.R. 330, holding; "The right to demand its protection is no empty technicality."

Even in cases of misdemeanors the information or the indictment must be free from all ambiguity, and leave no doubts in the mind of the accused and the court of the extact offense intended to be charged, not only that the defendant may know what he is called upon to meet, but that, upon his pleas of former acquittal or conviction, the record may show with accuracy the exact offense to which

the plea relates. This Court so holding in: *United States* v. *Simmons*, 96 U.S. 360, (24 L. Ed. 819), *United States* v. *Hess*, 124 U.S. 843 (31 L. Ed. 516), *Pettibone* v. *United States*, 148 U.S. 197, (37 L. Ed. 419).

II.

An unlawful arrest cannot be given life (*De Jonge* v. *State of Oregon* 249 U.S. 353, 562; 57 S. Ct. 255, 259) in the absence of a proper affidavit made before a Judge of the Municipal Court of Chicago. See, 382, Chap. 37 Ill. Rev. Stat. (Bar Ed.) Vol. I 1953, p. 1238. On this principle of right the petitioner both by the Federal and State Constitution and the law, was entitled to be free from arrest and search for evidence in the absence of a warrant on the information held by the police until proper complaints before a Judge of the Municipal Court under oath or affirmation were ordered drawn, charging the commission of a specific described crime, and the existence of probable cause shown to the court to suspect that the petitioner had committed the same.

Petitioner submits, that probable cause for issuing a warrant is a judicial function to be determined by a judge before whom the complaint is made, as required by Sec. 382, Chap. 37, of the Ill. Rev. Stat. A.D. 1953 (Vol I, p. 1238) providing, that informations and evidence upon which the judge acts must be reduced to writing, incorporated into a formal complaint, and verified by affidavit, and so held in *People* v. *Prall*, 314 Ill. 518, 145 N.E. 610.

A complaint issued upon the mere conclusion of the accuser unsupported by facts, does not show probable cause within the meaning of Sec. 6, of Art. II, of the Constitution of Illinois, A.D. 1870. Thus in *Lippman* v. *People*, 175 Ill. 101, 51 N.E. 872, it was said:

> "It has been uniformly held, whenever the question has arisen under a statute or constitution containing such provision, that the oath or affirmation must show probable cause arising from facts within the knowledge of affiant, and must exhibit the facts upon which the belief is based, and that his mere belief is not sufficient. (*United States* v. *Thuread*, 20 Fed. 621; *Johnson* v. *United States*, 87 Fed. 187)."

The complaint of Mrs. Ann Maier, (Pl. Ex. 1, R. 1, #31350,) discloses, (a) no appearance made before a Judge of the Municipal Court, testifying under oath, and showing probable cause for the issuance of a warrant, (b) or the appearance of Joanne Maier, age 10 years, the prosecutrix before the court, testifying in her own behalf as to probable cause, (c) The complaint as filed with the clerk, shows no verification subscribed and sworn to by her as the affiant (Pl. Ex. 1, R. 1, #33304), and (d) That the only act performed by Mrs. Ann Maier was that she signed the information as filed with the Clerk on the 13th day of September, 1948. (R. 37-39, #31350).

III.

The crime of contributiong to the delinquency of children, constitutes an offense against the People of the State of Illinois. Section 33 of Article VI; (Appendix XII) directs that all process against citizens so charged, must be carried in the name and by the authority of the People of Illinois. (*Wallham* v. *Ingersoll*, 177, Ill. 123; 7 N.E. 519.)

The information filed by Annie Maier (Pl. Ex. 1, R. 1, #33304) runs "in the name of the Municipal Court of Chicago" and comes in her own proper person.

A writ so executed, and omitting the requirement of Sec. 13 of Art. VI is held to be fatally defective. (*Wallham* v. *Ingersoll, supra,* hence petitioner was not only tried upon an unlawful arrest, but upon a void and illegal information as well.

The complaint of Mrs. Ann Maier, based upon hearsay, constituting a bad reputation of the petitioner, and causing his arrest, standing alone does not constitute probable cause. (R. 37, 39, #31350.)

In *People* v. *Ford,* 356 Ill. 572, 191 N.E. 315, it was held:

> "A bad reputation of the defendant, even if known to the police officers, is not a fact which standing alone, and is not sufficient to induce a reasonable belief and authorize an arrest and search without a warrant."

To the same effect, it was held in *People* v. *Martin,* 382 Ill. 192; 46 N.E. 2d. 997.

IV.

The Trial Court gave erroneous instructions; the Trial Court deprived the petitioner of a fair trial and brought about a miscarriage of justice when it erroneously gave instructions contrary to the limitations and prescriptions, setting forth the causes, under Secs. 100 and 103, Chap. 38, Ill. Rev. Stat. 1953, Vol. I, pp. 1368-1369. Appendix IV, V, *People* v. *Plocar,* 411 Ill. 141, 103 N.E. 2d 612; *Terminiello* v. *Chicago,* 337 U.S. 1.

V.

The right of equal protection of the laws of the State within the meaning of Sec. 1 (1) of the XIVth Amend-

ment, is a guarantee that no state whether by judicial, ministerial or executive officer or by its legislature, may deprive any individual or any class, of rights that are accorded to others in a similar situation. Even though the law of a state on its face, is in no way discriminatory, if a police officer of a state enforces it, or a judicial officer of a state applies it in such a manner to any individual or class, or shows that he or his class was singled out for discriminatory, arbitrary and invidious treatment in a substantial way, that is a denial of equal protection of the law. In *Hysler* v. *Florida*, 315 U.S. 411; 86 L. Ed. 932; 62 S. Ct. 688, this court said:

"If Hysler had been singled out for invidious treatment by the Florida Supreme Court, he could properly complain here."

Applying this rule to the instant case, in *People* v. *Cosper*, 405 Ill. 543, 92 N.E. 2d 173; the opinion filed March 22, 1950, and the court there held no constitutional questions were presented for determination and transferred the cause to the Appellate Court, First District. "Petitioner relied upon *People* v. *Weber*, 335 Ill. 215, 81 N.E. 2d. 5, opinion filed June 21, 1948. The Appellate Court, on the strength of the Weber case, *supra*, reversed and remanded, the instant case.

In *People* v. *Plocar*, 411 Ill. 141, 103 N.E. 2d 612, opinion filed January 24, 1952, the court held:

> "The motions in arrest of judgment were improperly overruled. A motion in arrest of judgment will reach defects in an information the same as a motion to quash or as a general demurrer, and in a criminal case, a motion in arrest of judgment opens the entire record for examination and reaches any defect ap-

parent thereon. *People* v. *Goldberg,* 287 Ill. 238, 122 N.E. 530. Here, the information was insufficient to charge a crime. If an information or indictment is void, the question whether the indictment or information is totally defective or insufficient to charge the offense is preserved for review in a motion in arrest of judgment even though there has been no motion to quash or such motion is not made in apt time. If the information is void it is error to overrule a motion in arrest, and on review the proper order is one of reversal without remanding. *People* v. *Green,* 368 Ill. 242, 13 N.E. 2d. 278; 115 A.L.R. 348."

The Plocar case, *supra,* notwithstanding, the Supreme Court, in *People* v. *Cosper,* 5 Ill. 2d 97, 125 N.E. 2d 61; opinion filed January 21, A.D. 1955, and rehearing denied, March 22, A.D. 1955, Appendix I, held:

"Where the defendant had not raised any constitutional questions in motions for a new trial or in arrest of judgment the defendant had waived his right to be heard on them in the Supreme Court of Illinois. S. H. A. Chap. 110, § 259.47."

The petitioner, therefore, respectfully submits that the discriminatory action of the Municipal Court of Chicago, the Appellate Court, First District, and the Supreme Court of Illinois, in denying petitioner rights that had been accorded to others by the Supreme and Appellate Courts of Illinois in reference to child delinquency, that were basic and fundamental, such denial, in substance, is conclusive that petitioner was denied the equal protection of the laws, as cited by the Supreme Court in its last and final opinion and is a sufficient showing of record here that the petitioner's rights under the XIVth Amendment have been denied, rejected and violated.

Petitioner submits, that where a reviewing court acting in its capacity to review, knowingly rejects and refuses to grant protection to its citizens under basic constitutional rights, as guaranteed by the XIVth Amendment to the Constitution of the United States, clearly shown throughout the record in this cause, the reviewing court of a state thereby indicates that:

(1) Its oath of office under Art. VI, Secs. 2 and 3 of the Constitution of the United States was a mere color of compliance with the Statute;

(2) That the reviewing court of last resort is unable to, and incapable of according to every litigant before it the protection that the State and Federal Constitutional have ordained and guaranteed to him;

(3) And that the court of last resort is incapable of correcting its own error, and

(4) That the court arbitrarily singles out an individual or class of individuals, and permits them to be dealt with, respecting their fundamental rights, in a manner arbitrarily and unreasonably different from that in which others similarly situated are dealt with. *United States* v. *Reese,* 92 Ill. U.S. 214.

CONCLUSION

It is most respectfully suggested, that the action of the Appellate Court, First District, and the Supreme Court of Illinois, in their last final opinion, was but an enlargement of the original denial of due process of law by the trial court, and that such action did not cure the denial of due process of law under the XIVth Amendment. Where-

fore, petitioner most respectfully suggests, that the record in this cause is such that it admits of no defense to petitioner's claimed denial of substantial constitutional rights to the petitioner, suffered by him under the laws and constitutions of the State of Illinois. Hence, this case is such that the writ of certiorari should be granted by this Honorable Court and the cause reviewed.

Respectfully submitted,

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Petitioner.

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Demetri M. Spiro,

Attorneys for Petitioner.

(Appendices Follow)